witnesses, or lack of documents, and non-availability of witnesses, but also the agony of having the suit hanging over his head for the last 6 $^{1}/_{2}$ years. See *Bliss v. Lambeth* [1978] 1 WLR 382. In arriving at my decision I did bear in mind the relevant principles as stated in the case of *Allen v. Sir Alfred McAlpine & Son Ltd.* [1968] 1 All ER 546.

I reiterate that the plaintiff kept the suit in abeyance for about 6 $^{1}/_{2}$ years, during which time it remained completely inactive. Further the plaintiff gave no satisfactory explanation at all for this inactivity. In the circumstances, the Court holds that the plaintiff has been guilty of inordinate and inexcusable delay, and as such, allows the defendants' applications, to dismiss this suit for want of prosecution.

LEE TENG KUI

v.

MENTERI DALAM NEGERI, MALAYSIA & 2 ORS.

HIGH COURT, JOHOR BAHRU
TUAN HAIDAR BIN MOHD NOOR J.
[CRIMINAL APPLICATION NO. 44-10 OF 1993]
10 JANUARY 1994

PREVENTIVE DETENTION: Affidavits - Affidavit of Deputy Home Minister prepared by Attorney General's Chambers but affirmed by officer of the Home Ministry - Whether valid - Commissioners for Oath Rules 1993 r. 12.

PREVENTIVE DETENTION: Failure by deponents to swear in formal part of affidavit - Whether defect curable - Whether Court should invoke O. 41 r. 4 RHC 1980 and allow use of affidavit.

PREVENTIVE DETENTION: Detainee's right to make representation - Rule 3(3) Dangerous Drugs (Special Preventive Measures)(Advisory Board Procedure) Rules 1987 - Whether complied with by detaining authority.

The applicant applied for a writ of *habeas corpus* on the grounds that the respondents, the detaining authorities herein, had filed defective affidavits in that the affidavit of the Deputy Home Minister, being affirmed by his own officer, was affirmed in contravention of r. 12 Commissioners for Oath Rules 1993, and that the deponents in some of the respondents' affidavits did not swear in the formal parts of the affidavits. And it was further contended that the applicant had not been informed of his right to make representations in contravention of Rule 3(3) Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987.

The primary question that arose was whether the defects in the affidavits, if any, amounted only to an irregularity and if so, whether the Court should invoke O. 41 r. 4 Rules of the High Court 1980 (RHC 1980) and allow the use of the said affidavits.

Held:

[1] Although in the opening paragraph of the affidavits the word "oath" or "affirm" has been omitted, the word "affirm" was used before the deponent put his signature thereon, thereby

signifying that the affidavits were duly affirmed. The defects, if any, were only an irregularity and the applicant is in no way prejudiced thereby and therefore this is a proper case where the Court should exercise its discretion by invoking O. 41 r. 4 RHC 1980 and allow the use of the said affidavits. A further examination of the affidavits also showed that contrary to what the applicant alleged the jurat did contain spill over of the part of the last substantial averment in the said affidavit. This ground too must therefore fail.

[2] Though the Commissioner for Oath who affirmed the affidavit of Y.B Dato' Megat Junid Megat Ayub was a public officer of Kementrian Dalam Negeri, the facts showed that the said affidavit was prepared by the Attorney General's Chambers and not by the Commissioner for Oath concerned. Rule 12 Commissioners for Oaths Rules 1993 had not therefore been contravened as alleged.

[3] Nowhere in the affidavits filed on behalf of the applicant was it denied that his right to make representations under the said rule 3(3) was explained to him in Hokkien by the interpreter Mahzon as deposed by the said Mahzon. The competency of Mahzon, likewise, had also not been challenged. Bearing in mind that the statement to be interpreted is a fairly simple one and the issue involved was one of fact, it is proper for the Court to accept Mahzon's affidavit as true with the result that the applicant also failed on this ground.

[Application for writ dismissed].

Cases referred to:

Voon Mow Chan v. Menteri Dalam Negeri & Anor. *[1993] AMR 38* ***(dist)***

Amanah International Finance Bhd. v. Thien Juk Cheung & Anor. Suit No. KG 392 of 1986 ***(dist)***

PP v. Saw Ah Kow [1993] 2 CLJ 232 ***(dist)***

Legislation referred to:

Commissioners for Oaths Rules 1993, Rule 12

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, rule 3(3)

Evidence Act 1950, s. 106

Rules of the High Court 1980, O. 41 r. 4

For the applicant - Teh Poh Teik; M/s Teh Poh Teik & Co.

For the respondent - Y. Bhg. Dato' Abdul Hamid Embong, SFC

JUDGMENT

Haidar Bin Mohd Noor J:

It was agreed by Counsels for both parties that the decision or order in this criminal application for a writ of *habeas corpus* would be binding in respect of criminal application No. 44-11-93 as the issues are the same in both cases.

In this application, the applicant is relying on the following grounds:

(1) All affidavits filed on behalf of the respondents are defective and therefore inadmissible in evidence;
(2) Non-compliance of rule 3(3) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987.

Ground (1)

According to Mr. Teh Poh Teik, Counsel for the applicant, the defects can be classified under 3 categories:

(a) Violation of kaedah 12 Kaedah-Kaedah Pesuruhjaya Sumpah 1993.
(b) In some of the affidavits the page in which the jurat appears does not carry a substantial averment continuing from the preceding page or paragraph.
(c) All the affidavits on behalf of the respondents, the formal parts are defective because in those parts the deponents did not affirm or swear.

Ground (1)(a)

Kaedah 12 Kaedah-Kaedah Pesuruhjaya Sumpah 1993 reads:

12. Seseorang pegawai awam atau orang lain yang dilantik sebagai Pesuruhjaya Sumpah boleh melakukan kesemua atau mana-mana yang berikut:

(a) mengendalikan sumpah untuk:

(i) justifikasi jaminan;
(ii) **mengambil apa-apa affidavit atau ikrar;**
(iii) sumpah wasi-wasi dan pentadbir-pentadbir; dan
(iv) sumpah orang-orang dalam apa-apa tindakan, perkara atau prosiding yang menunggu penyelesaian atau hampir hendak dimulakan dalam mana-mana Mahkamah; dan

(b) mengambil dan menerima akaun berkanun.

Dengan syarat bahawa seseorang pegawai awam atau orang lain yang dilantik sebagai Pesuruhjaya Sumpah tidak boleh menjalankan apa-apa fungsi yang dinyatakan dalam perenggan (a) dan (b) berkenaan dengan mana-mana dokumen yang disediakan olehnya.

(emphasis is mine)

It is not disputed that the affidavit Y.B. Dato' Megat Junid bin Megat Ayob (encl. 12) was affirmed before a Commissioner for Oaths, who is a public officer with Kementerian Dalam Negeri. Mr. Teh Poh Teik, Counsel for the applicant, then submitted that there was no evidence adduced that the said Commissioner for Oaths did not prepare the said affidavit. With respect, I am of the view that it is not for the respondents to adduce negative evidence (see s. 106 of the Evidence Act 1950). It is for the applicant to show that the said Commissioner for Oaths prepared the said affidavit if it is intended to show that such action offends the proviso to kaedah 12 Kaedah-Kaedah Pesuruhjaya Sumpah 1993. Be that as it may, Y. Bhg. Dato' Abdul Hamid Embong, the Senior Federal Counsel, acting for the respondents intimated that the said affidavit was prepared by his division and not by the Commissioner for Oaths concerned. I do not see any reason to doubt what he said from the Bar table. This ground has no basis at all and therefore failed.

Ground (1)(b)

Mr. Teh Poh Teik contended that the affidavit at encl. 16 was defective as the said affidavit ended at a page and the jurat began on a following page or the page bearing the jurat did not contain a substantial averment or spill-over of the part of the last substantial averment in the said affidavit and citing in support thereof the case of *Voon Mow Chan v. Menteri Dalam Negeri & Anor.* [1993] AMR 38 at p. 2204 where Vincent Ng Kim Khoay JC subscribing to the ratio in my judgment in *Amanah International Finance Bhd. v. Thien Juk Cheung & Anor.* Suit No. KG 392 of 1986 and held such affidavit defective and inadmissible. An examination of the said affidavit (encl. 16) showed that the page bearing the jurat did contain spill over of the part of the last substantial averment in the said affidavit and the authority relied on is not of much help and is distinguishable. This ground failed also.

Ground (1)(c)

It was contended on behalf of the applicant that in all the affidavits, the first part of the affidavit, i.e. the opening - should state "affirm or swear" and cited the case of *Voon Mow Chan v. Menteri Dalam Negeri, supra,* in support thereof.

The learned Senior Federal Counsel intimated that there were two alternatives for him to take on this issue, namely, to seek an adjournment so that the defects could be corrected or to seek leave of the Court for use of the said defective affidavits under O. 41 r. 4 of the Rules of the High Court 1980 (RHC).

As for the alternative of seeking an adjournment, regretably I could not agree as it was too late in time and would not be fair in any event as it would amount to encouraging parties to invariably seek an adjournment every time defects are shown in the affidavits.

As to the other alternative, what I have to consider is whether what was complained by the applicant in respect of the defects in the affidavits is an irregularity or not. No doubt in the opening paragraph of the affidavits the word 'oath' or 'affirm' has been omitted but at the last page of the affidavits the word 'affirm' (ikrar) is used before the deponent put his signature thereon signifying to my mind that the affidavits were duly affirmed. I was therefore of the opinion that the defects, if any, in the affidavits are only an irregularity and the applicant is in no way prejudiced thereby and therefore this was a proper case where the Court should exercise its discretion by invoking O. 41 r. 4 of RHC. I accordingly granted leave and allowed the use of the affidavits.

Ground (2)

The applicant contended that there has been non-compliance of rule 3(3) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 i.e. to remind the applicant of his right to make representation.

The applicant himself did not file any affidavit but asked his son Lee Siew Hue to do so on his behalf. Lee Siew Hue merely deposed that there was non-compliance of the said rule 3(3) and that he did not understand Bahasa Malaysia other than Hokkien, Teochew and Mandarin (encls. 3 and 10). In other words, even if the said rule 3(3) had been purportedly complied, he did not understand what was said to him under the

said rule 3(3). However, nowhere in the affidavits filed on his behalf was it ever denied that his right to make representation under the said rule 3(3) was explained to him in Hokkien as deposed by Mahzon (encl. 21). Instead the applicant chose to challenge by way of the submission of his Counsel, that the fact that Mahzon attended a course at Institut Tadbiran Awam Negara (INTAN) does not make him conversant in Hokkien and competent as an interpreter (see exhibit 'MA1') and *PP v. Saw Ah Kow* [1993] 2 CLJ 232 was cited in support thereof. However, in *PP v. Saw Ah Kow, supra,* the learned Judicial Commissioner was dealing with the witness as an expert in linguistics especially Hokkien. Here, with respect, we are not dealing with expertise in language but it is merely a question of whether Mahzon, a Malay, is competent to converse in Hokkien. Looking at exhibit MA1 Mahzon got "pangkat kepujian" and therefore the interpretation to the applicant in Hokkien by Mahzon of his right to make a representation would not pose much difficulty. The statement to be interpreted is a fairly simple one. In any event nowhere in the affidavits in support, did the applicant challenge the competency of Mahzon as an interpreter or for that matter pursuant to the said rule 3(3) his right was interpreted to him in Hokkien. This is an issue of facts and not of law. If the facts remained unchallenged I have to accept the affidavit of Mahzon as true. In the result the applicant failed on this ground also.

In the circumstances the application for the writ of *habeas corpus* was dismissed by me. As agreed by the parties that my decision in this application would be binding in Criminal Application No. 44-11-93, I accordingly dismissed it also.

MAJLIS AMANAH RAKYAT (MARA)

v.

TAM SEEK HONG & 54 ORS.

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[ORIGINATING SUMMONS NO: 24-158-1993 (T)]
30 MARCH 1994

LAND LAW: Plaintiff is registered owner of land - Claim for possession of land by summary procedure - Order 89 r. 1 RHC 1980 - Defendant's occupation is based on TOL in the name of one of the defendants - Sections 66, 67, 69 National Land Code 1965 - Compensation for expenses incurred over land - Whether occupier of TOL had right to compensation from subsequent holder of TOL or subsequent registered proprietor - Indefeasibility of title.

PRACTICE & PROCEDURE: Recovery of possession of land - Whether summary procedure under O. 89 r. 1 RHC 1980 applies to oust defendant - Power to oust defendant/squatters without resorting to Court - Whether any triable issues.

PRACTICE & PROCEDURE: Contentious affidavit filed by solicitor for defendants - Whether contents of affidavit within personal knowledge of deponent - Order 41 r. 5 RHC 1980 - Whether failure to reveal sources of information and grounds of belief in in affidavit is non-compliance of RHC 1980 - Order 41 r. 4 RHC 1980 - Whether failure amounts to irregularity and curable.

CONTRACT: Doctrine of promissory estoppel - Whether doctrine is used in support of claim (as a sword) or in defence (as a shield).

The plaintiff had applied by originating summons under O. 89 r. 1 of RHC 1980 to oust the defendants summarily as trespassers without compensation from the 99 year lease land situated in H.S.(D) KN 31/89, No. P.T. 679, Mukim Bagan Serai.

Held:

[1] The defendants who occupied the said land on temporary occupation licences cannot acquire a right to be compensated by either a subsequent holder of a temporary occupation licence of the said land or by a subsequent registered proprietor for any expenses that the defendants might have incurred over the said land during their period of occupation under temporary occupation licences.